

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JENNIFER SALGADO and JENNY'S
TAX SERVICE,

Defendants.

No. 1:16-CV-03186-SMJ

**ORDER DENYING
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER AND
MEMORANDUM IN SUPPORT
AND DIRECTING THE PARTIES
TO SUBMIT A JOINT
STATEMENT**

Before the Court, without oral argument, is Defendants' Motion for Protective Order and Memorandum in Support, ECF No. 17. Through this motion, Defendants seek an order from this Court limiting the United States' ability to file unredacted Defendants' customer lists and personal identifying information into the public record. *Id.* at 1. Plaintiff United States opposes the motion and argues that Defendants have not demonstrated that good cause exists justifying a protective order in this case and that such an order would be unduly burdensome on Plaintiff. ECF No. 22 at 1 and 10. Having reviewed the pleadings and the file in this matter, the Court is fully informed and denies Defendants' motion. However, as detailed below, the Court is concerned about including private

1 information into the public record. For this reason, the Court orders the parties to
2 meet and confer and agree on what information they will redact from Court filings
3 to prevent personal identifying information from becoming public. They shall
4 submit a joint proposal on this issue to the Court no later than April 14, 2017.

5 **I. Background**

6 The United States filed the complaint in this case on October 25, 2016. ECF
7 No. 1. In it, the United States alleges that Jennifer Salgado (née Montenegro)
8 through her business, Jenny's Tax Services, prepared and filed hundreds of false
9 or fraudulent federal tax returns in violation of federal law. *See generally id.* The
10 United States brings this action under 26 U.S.C. §§7402(a), 7407, and 7408,
11 seeking injunctive relief against Defendants that would prevent them from acting
12 as tax return preparers for persons other than themselves or a legal spouse, among
13 other relief. *Id.* at 12–14. Defendant Salgado is the sole proprietor of Jenny's Tax
14 Service. ECF No. 18 at 1.

15 This case is in its early stages. Defendants filed their answer on November
16 28, 2016. ECF No. 7. The Court held a scheduling conference with the parties on
17 January 27, 2017. ECF No. 15. During the conference, the parties confirmed their
18 disagreement regarding the propriety of issuing a protective order in this case.
19 ECF Nos. 13 and 14. Through a text order, the Court ordered Defendants to file a
20 motion regarding their request for a protective order under Federal Rule of Civil

1 Procedure 26(c). ECF No. 14. In essence, Defendants believe the client
2 information in their possession, including client lists, constitutes a protectable
3 trade secret. ECF No. 17 and 24. The United States disagrees. ECF No. 22.
4 Defendants filed the motion at issue here on January 31, 2017, and responsive and
5 reply memoranda followed. ECF Nos. 17, 22, and 24. The Court now considers
6 the parties' briefing on the matter.

7 **II. Legal Standard**

8 Federal Rule of Procedure 26(c) governs the issuance of protective orders in
9 civil matters. Courts may issue "an order to protect a party or persons from
10 annoyance, embarrassment, oppression, or undue burden or expense" for good
11 cause shown. Fed. R. Civ. P. 26(c)(1). However, courts recognize and enforce a
12 presumption in favor of public access to records in civil litigation absent good
13 cause. *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206,
14 1210 (9th Cir. 2002) ("Generally, the public can gain access to litigation
15 documents and information produced during discovery unless the party opposing
16 disclosure shows 'good cause' why a protective order is necessary.")

17 "For good cause to exist, the party seeking protection bears the burden of
18 showing specific prejudice or harm will result if no protective order is granted."
19 *Id.* at 1210–11 (citing *Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d
20 470, 476 (9th Cir.1992) (holding that "broad allegations of harm, unsubstantiated

1 by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test”).
2 If good cause is shown, then courts balance the public’s interest in access to court
3 proceedings with the private interests that would be harmed in a specific case to
4 decide whether issuing a protective order is appropriate and necessary. *Id.*

5 Courts maintain broad discretion in deciding whether or not to issue
6 protective orders. *Id.* at 1211 (“The law, however, gives district courts broad
7 latitude to grant protective orders to prevent disclosure of materials for many
8 types of information, including, *but not limited to*, trade secrets or other
9 confidential research, development, or commercial information.” *Id.* at 1211
10 (emphasis in original). Accordingly, a court can issue a protective order in cases
11 demonstrating circumstances that, in its reasoned judgment, merit such an order.
12 *Id.* at 1211–12 (“Rule 26(c) authorizes the district court to issue *any* order which
13 justice requires to protect a party or person from annoyance, embarrassment,
14 oppression, or undue burden. The Supreme Court has . . . [noted that the] unique
15 character of the discovery process requires that the *trial court have substantial*
16 *latitude to fashion protective orders.*” (citations and quotation marks omitted).

17 **III. Analysis**

18 Defendants argue the Court should grant the requested protective order
19 because “good cause exists to protect [Defendants’] customer information as a
20 trade secret.” ECF No. 17 at 4. Specifically, they would require the United States

1 “redact personal identifying information of [Defendants’] clients prior to filing
2 with the Court.” *Id.* They assert that these client lists are “a trade secret that is
3 commercially valuable because it is not known to competitors or the general
4 public.” *Id.* Further, Defendants maintain that Rule 5.2—which requires parties to
5 redact specific sensitive information such as social security numbers—would not
6 sufficiently protect the client lists at issue because these are trade secrets. *Id.* at 6;
7 ECF No. 24 at 4. Lastly, Defendants believe the United States has not shown that
8 the proposed protective order is unduly burdensome. ECF No. 24 at 5.

9 **A. Defendants’ client lists are not protectable trade secrets.**

10 In Washington state “[c]ompilations of customer information *may* be a trade
11 secret.” *Robbins, Geller, Rudman & Dowd, LLP v. State of Washington et al*, 328
12 P.3d 905, 911 (Wash. Ct. App. 2014). “[W]hether a customer list is protected as a
13 trade secret depends on three factual inquiries: (1) whether the list is a compilation
14 of information; (2) whether it is valuable because unknown to others; and (3)
15 whether the owner has made reasonable attempts to keep the information secret.”
16 *Ed Nowogroski Ins., Inc. v. Rucker et al*, 971 P.2d 936, 945 (Wash. 1999).
17 However, “[t]rade secret protection will not generally attach to customer lists
18 where the information is readily ascertainable.” *Id.*; *see also Nat’l City Bank, N.A.*
19 *v. Prime Lending, Inc.*, 737 F. Supp. 2d 1257, 1266 (E.D. Wash. July 20, 2010)
20 (“[Customer] list was not a trade secret because it was readily ascertainable by

1 proper means. . . . Plaintiffs claim that it would have been very expensive and
2 time-consuming to compile all the customer information that Defendants took
3 from them. That might be, but publicly available information does not become a
4 trade secret even if it is expensive to acquire.”) (citations omitted).

5 Here, Defendant Salgado states that Defendants “maintain copies of
6 customer tax returns and lists of clients in compliance with federal law.” ECF No.
7 18 at 2. This constitutes a compilation of information.

8 The second factor is also met. Defendants assert that the information is
9 commercially valuable precisely because it is not known to competitors or the
10 general public. ECF No. 17 at 4. Further, Defendant Salgado avers that
11 competitors have approached her to purchase her company in the past year. ECF
12 No. 18 at 2. She asserts that this interest from competitors “is based almost
13 entirely on the goodwill generated by the company and access to our book of
14 business.” *Id.*

15 Third, Defendants also present information detailing the steps they have
16 taken to maintain their customers’ information confidentiality. That they do so
17 because they are required to do so by law is immaterial; it is undisputed that they
18 have taken steps to maintain their clients’ information secret.

19 Nevertheless, whether trade secret protection attaches turns on whether the
20 information is “readily ascertainable.” *Ed Nowogroski Ins., Inc.*, 971 P.2d at 945.

1 Defendants propose to designate the following information “confidential” under
2 their proposed protective order: (1) client/spouse/dependents name; (2)
3 client/spouse/dependents address; (3) client/spouse/dependents telephone number;
4 (4) client/spouse/dependents social security or tax identification number; (5)
5 client/spouse/dependents; (6) client banking/financial information; (7) schedule C
6 business name, EIN, address; (8) schedule E property addresses; and (9) W-
7 2/1099 employer/payer’s name, EIN, address. ECF No. 17-1 at 2. The United
8 States asserts that this information is either publicly available or already protected
9 from disclosure under Rule 5.2. ECF No. 22 at 1. The Court agrees with the
10 United States’ position that this information is either publicly available or
11 protected by Rule 5.2. Accordingly, the information Defendants seek to protect is
12 not a trade secret.

13 **B. The parties shall meet and confer and submit a joint statement**
14 **proposing how to more fully protect Defendants’ clients’ privacy.**

15 Although the Court finds the information at issue here does not constitute a
16 trade secret upon which protection attaches, it is concerned about adequately
17 protecting Defendants’ clients’ privacy. While Rule 5.2 establishes the floor
18 regarding the redactions parties must make when filing documents in federal
19 court, it is well within the Court’s discretion to order additional protections when
20 necessary. *See supra* at section II; *see also* Fed. R. Civ. P. 5.2 (“*Unless the court*
orders otherwise, in an electronic or paper filing with the court that . . .”)

1 (emphasis added). Specifically, the Court is concerned that Defendants' clients
2 likely and reasonably expected that by turning to Defendants for help in filing tax
3 returns their information—particularly personal identifying information—would
4 not become publicly available. This is especially true of sensitive financial and
5 other information contained in federal tax returns. The parties represent that tax
6 returns will be filed in this case, therefore the Court believes there is reason to
7 take precautionary measures to protect sensitive and private information.

8 Accordingly, the Court orders the parties to meet and confer and agree upon
9 what information—in addition to that already specified in Rule 5.2—they will
10 redact prior to filing documents with the Court. The Court expects that their
11 agreement will result in public filings with all personal identifying information
12 redacted such that a specific client cannot be recognized. In issuing this order, the
13 Court is cognizant of not overburdening the parties and of maintaining open court
14 proceedings. However, as this order only contemplates limits on public filings, the
15 burden on the parties will be minimal and not much more onerous than Rule 5.2's
16 present requirements. Moreover, the Court will only order redactions as necessary
17 to protect the reasonable privacy concerns of Defendants' clients, who are not
18 parties to this litigation. The parties shall meet and confer and submit a joint
19 statement on this issue no later than April 14, 2017, for the Court's consideration
20 and approval.

1 //

2 //

3 Accordingly, **IT IS HEREBY ORDERED:**

4 **1.** Defendants' Motion for Protective Order and Memorandum in
5 Support, **ECF No. 17**, is **DENIED**.

6 **2.** The parties are **ORDERED** to meet and confer and submit a joint
7 statement regarding the redaction of all personally identifying
8 information prior to filing with the Court **no later than April 14,**
9 **2017.**

10 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
11 and provide copies to all counsel.

12 **DATED** this 24th day of March 2017.

13 

14 SALVADOR MENDOZA, JR.
15 United States District Judge
16
17
18
19
20